

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 16, 2002

Division: Growth Management

Bulk Item: Yes ☐ No ☒

Department: Planning

AGENDA ITEM WORDING:

Second of two public hearings to adopt an ordinance amending the Monroe County Land Development Regulations by creating Division 17 and Sections 9.5-435 through 9.5-438 to regulate sexually orientated businesses.

ITEM BACKGROUND:

During its regular meeting on November 21, 2001 the Board of County Commissioners directed the Planning department to prepare a report on sexually oriented businesses located within the unincorporated areas of the County. The Board reviewed the report and responded by directing Growth Management staff to draft an amendment to the Land Development Regulations (LDRs) based on the recommendations outlined in the report. The Development Review Committee recommended approval of the amendment on July 2, 2002, and it was approved by the Planning Commission on July 23, 2002.

PREVIOUS REVELANT BOCC ACTION:

The first public hearing was held at the regular BOCC meeting on August 21, 2001.

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST: N/A

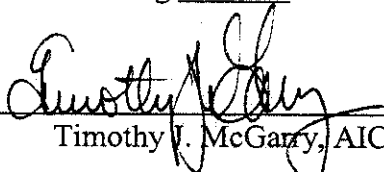
BUDGETED: Yes ☐ No ☐

COST TO COUNTY: N/A

REVENUE PRODUCING: Yes ☐ No ☒ AMOUNT PER MONTH ☐ Year ☐

APPROVED BY: County Atty ☒ OMB/Purchasing N/A Risk Management N/A

DIVISION DIRECTOR APPROVAL:


Timothy J. McGarry, AICP

DOCUMENTATION: Included ☒ To Follow ☐ Not Required ☐

DISPOSITION: _____

AGENDA ITEM # 62

**LAND DEVELOPMENT REGULATIONS
TEXT AMENDMENT**

**REGULATION OF SEXUALLY ORIENTED
BUSINESSES**

**BOARD OF COUNTY COMMISSIONERS
HARVEY GOVERNMENT CENTER
OCTOBER 16, 2002**

PROPOSED TEXT AMENDMENT

SECTIONS 9.5-435 THROUGH 9.5-438 (NEW) OF THE MONROE COUNTY CODE

THE AMENDMENT PROPOSES TO REQUIRE SEXUALLY ORIENTED BUSINESSES TO HAVE OPAQUE WINDOWS AND DOORS; REQUIRE A SEPARATION DISTANCE OF 500 FEET BETWEEN SEXUALLY ORIENTED BUSINESSES AND THE FOLLOWING USES: PUBLIC PARKS, SCHOOLS, PLACES OF WORSHIP, AREAS USED FOR RESIDENTIAL PURPOSES, AND OTHER SEXUALLY ORIENTED BUSINESSES; AND CREATE AN AMORTIZATION PERIOD FOR EXISTING SEXUALLY ORIENTED BUSINESSES TO COME INTO COMPLIANCE OR CEASE OPERATIONS.

RECOMMENDATIONS

Staff:	Approval	June 12, 2002	Staff Report
DRC:	Approval	July 2, 2002	Resolution #D12-02
PC:	Approval	July 23, 2002	Resolution #P50-02
BOCC:	First Hearing	August 21, 2002	Agenda Item #V3

DRAFT BOCC ORDINANCE

ORDINANCE NO. -2002

AN ORDINANCE AMENDING CHAPTER 9.5, MONROE COUNTY CODE BY CREATING DIVISION 17 AND SECTIONS 9.5-435 THROUGH 9.5-438, MONROE COUNTY CODE, IN ORDER TO REGULATE THE POTENTIAL ADVERSE SECONDARY EFFECTS OF SEXUALLY ORIENTED BUSINESSES ON SURROUNDING LAND USES; PROVIDING FOR THE SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR THE INCORPORATION INTO THE MONROE CODE; AND DIRECTING THE CLERK OF THE BOARD TO FORWARD A CERTIFIED COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, during its regular meeting on November 21, 2001 the Board of County Commissioners directed the Planning department to prepare a report on sexually oriented businesses located within the unincorporated areas of the County; and

WHEREAS, the report, entitled "Recommendations for the Regulation of Adult Oriented Businesses in Monroe County, Florida" found that sexually oriented businesses may have negative secondary effects on surrounding land uses; and

WHEREAS, the Board reviewed the report and responded by directing Growth Management staff to draft an amendment to the Land Development Regulations (LDRs) based on the recommendations outlined in the report; and

WHEREAS, the intent of the Board is not to suppress expression protected by the First Amendment, but rather to mitigate potential deleterious secondary impacts on sensitive surrounding land uses by establishing reasonable land use restrictions for sexually oriented businesses that will reduce the potential secondary impacts; and

WHEREAS, during a regularly scheduled meeting held on July 2, 2002, the Development Review Committee conducted a review and consideration of the request by the Planning and Environmental Resources Department to add Sections 9.5-435 through 9.5-438 of the Land Development Regulations; and

WHEREAS, the Development Review Committee passed Resolution No. D12-02 recommending approval of the proposed text amendment; and

WHEREAS, during a regular meeting held on July 23, 2002, the Monroe County Planning Commission conducted a public hearing on the proposed text and passed Resolution No. P50-02 recommending approval of the proposed text amendment; and

WHEREAS, The Monroe County Board of County Commissioners were presented with the following information, which by reference is hereby incorporated as part of the record of said hearing:

1. The Staff Report prepared on July 25, 2002; by K. Marlene Conaway, Director, Planning and Environmental Resources,
2. Proposed changes to the Monroe County Code,
3. The sworn testimony of the Growth Management Staff,
4. Comments by the public;

WHEREAS, the Monroe County Board of County Commissioners examined the proposed amendments to the Monroe County Code submitted by the Monroe County Planning Department at public hearings on August 21st, 2002, and October 16, 2002; and

WHEREAS, the Monroe County Board of County Commissioners makes the following Findings of Fact based on the evidence presented:

1. The proposed regulation doe not intend to suppress expression protected by the First Amendment, and
2. The proposed regulations will allow sexually oriented businesses to locate within unincorporated Monroe County, and
3. The proposed regulations will protect sensitive land uses from the negative impacts which may result from a sexually oriented business;

WHEREAS, the Monroe County Board of County Commissioners makes the following Conclusions of Law based on the evidence presented:

1. The intent of the proposed regulations is to protect sensitive land uses from the deleterious impacts which may result from a sexually oriented business, and
2. The proposed regulations do not preclude the operation of a sexually oriented business within the unincorporated portion of Monroe County, and
3. Based on the Monroe County Year 2010 Comprehensive Plan, we find that the proposed regulations are consistent with the other goals, objectives, and policies set forth in the plan; and

WHEREAS, the Monroe County Board of County Commissioners hereby supports the decision of the Monroe County Planning Commission and the staff of the Monroe County Planning Department; and

WHEREAS, it is the desire of the Monroe County Board of County Commissioners that the following amendment to the Monroe County Code be approved, adopted and transmitted to the state land planning agency for approval;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

Section 1. Division 17, Sections 9.5-435 through 9.5-438 of Chapter 9.5, Monroe County Code created that reads as follows:

DIVISION 17. REGULATION OF SEXUALLY ORIENTED BUSINESSES

Section 9.5-435. Purpose and Intent

(a) It is the purpose of this section to regulate sexually oriented businesses as to promote the health, safety, and general welfare of the citizens of Monroe County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the unincorporated area of the county. The provisions of this section have neither the purpose or intent of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials, or other aspects of constitutionally protected speech. It is not the intent of the county commission to legislate with respect to matters of obscenity in this section, as those matters are regulated by federal and state law, particularly, Chapters 800 and 847, Florida Statutes. Similarly, it is not the intent or effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny the distributors and exhibitors of sexually oriented entertainment access to their intended market. Neither is it the intent or effect of this section to condone or legitimize the distribution of sexually oriented material.

Section 9.5-436. Definitions

For the purposes of this division, the terms and phrases listed below shall have the following meanings:

(S-1) *Sexually oriented bookstore* shall mean:

An establishment that rents and/or sells sexually oriented materials in any form to the public and meets any one of the following three tests:

- (a) the revenues from sexually oriented materials represent more than ten (10) percent of the gross revenues of the establishment over the same period;
- (b) twenty-five (25) percent or more of the stock-in-trade consists of sexually oriented materials;
- (c) It advertises or recognizes itself in any forum as "XXX", "adult", "sex" or otherwise as a sexually oriented business.

(S-2) *Sexually oriented business* shall mean:

Individually or in combination a sexually oriented book store, sexually oriented entertainment establishment, or sexually oriented motion picture theater as defined herein, and any other establishment whose employees display or expose specified anatomical areas as defined herein.

(S-3) *Sexually oriented entertainment establishment* shall mean:

An establishment whose employees exhibit or display specific sexual activities or expose specified anatomical areas while performing.

(S-4) *Sexually oriented materials* shall mean:

Books, magazines, periodicals, or other printed matter, or photographs, CD-ROMs or other devices used to record computer images, films, motion pictures, video cassettes, digital video disks (DVDs), slides or other visual representations or recordings which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas or instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

(S-5) *Sexually oriented motion picture theater* shall mean:

An establishment designed to permit the viewing of motion pictures and other film material which has as its primary or dominant theme matters depicting, illustrating or relating to specified sexual activities for observation by the patrons thereof.

(S-6) *Specified anatomical areas* shall mean:

- (a) Less than completely and opaquely covered: human genitals, pubic region, the human buttocks, and female breast below a point immediately above the top of the areola; and/or
- (b) Human male genitals in a discernibly turgid state, even if completely covered.

(S-7) *Specified sexual activities* shall mean:

Human genitals in a state of sexual stimulation or arousal or acts of human masturbation, sexual intercourse, sodomy, bestiality, or fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast.

Section 9.5-437. Applicability

- (a) Sexually oriented businesses shall be allowed in land use districts that permit commercial development per Division 2 of this Chapter with the following restrictions:
 - (1) No sexually oriented business shall be located within five hundred (500) feet of the property line of any property used for residential purposes.
 - (2) No sexually oriented business shall be located within five hundred (500) feet of any property used as a place of worship, a public park, or a school.
 - (3) No sexually oriented business shall be located within five hundred (500) feet of another sexually oriented business.
 - (4) Sexually oriented businesses shall opaquely cover each window or other opening through which a person at the establishment may otherwise see inside the establishment.
 - (5) Signs for a sexually oriented business shall not depict specified anatomical areas or specified sexual activities.
- (b) For the purposes of Section 9.5-436(a) distances from properties shall be calculated by straight line measurement from property line to property line, using the closest property lines of the parcels of land involved.

Section 9.5-438. Non-conforming uses

- (a) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the subsequent location of a resident, a property used as a place of worship, a park, or a school within five-hundred (500) feet of it. This provision applies only to a legally established sexually oriented business, not to any sexually oriented business that had been terminated for any reason or discontinued for a period of ninety (90) days or more subsequent to the location of the residential use, place of worship, park or school.
- (b) Amortization. Within one year of the effective date of this Ordinance, all existing sexually oriented businesses shall conform to the provisions of this Division, or the use shall be terminated.

Section 2. If any section, subsection, sentence, clause, item, change, or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such validity.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 4. This ordinance shall be transmitted by the Planning Department to the Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes.

Section 5. This ordinance shall be filed in the Office of the Secretary of State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administrative Commission approving the ordinance.

Section 6. The Director of Growth Management is hereby directed to forward a copy of this ordinance to the Municipal Code Corporation for the incorporation in the Monroe County Code of Ordinances once this ordinance is in effect.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County,
Florida at a regular meeting held on the _____ day of _____ 2002.

Mayor Charles "Sonny" McCoy
Mayor Pro Tem Dixie Spehar
Commissioner Murray Nelson
Commissioner George Neugent
Commissioner Bert Jimenez

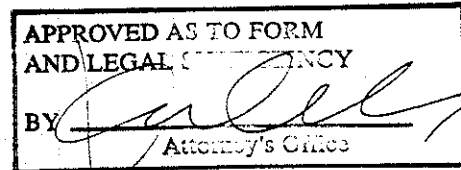
BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY _____
Mayor Charles "Sonny" McCoy

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

DEPUTY CLERK



BOCC STAFF REPORT

Memorandum



TO: Board of County Commissioners
FROM: K. Marlene Conaway, Director, Planning and Environmental Resources
DATE: July 25, 2002
RE: Sexually Oriented Business Land Use Regulations

Staff Report

I. Background

During its regular meeting on November 21, 2001 the Board of County Commissioners directed the Planning department to prepare a report on sexually oriented businesses located within the unincorporated areas of the County. The finished report, entitled "Recommendations for the Regulation of Adult Oriented Businesses in Monroe County, Florida" was presented to the Board at their regular meeting on May 15, 2002. The Board reviewed the report and responded by directing Growth Management staff to draft an amendment to the Land Development Regulations (LDRs) based on the recommendations outlined in the report. The report suggested the following regulations:

1. Require sexually oriented businesses to have opaque windows and doors.
2. Require a separation distance to be determined between sexually oriented businesses and the following uses:
 - Public parks
 - Schools and daycare centers
 - Places of worship
 - Areas used for residential purposes
 - Another adult oriented business
3. Allow a reasonable amortization (or 'sunset') period for existing sexually businesses to come into compliance or cease operations.

In addition to any regulatory language, specific definitions regarding the types of businesses affected and what constitutes sexually oriented material will have to be adopted.

Required separation distances are typically the most effective method of mitigating the adverse secondary effects on neighborhoods that have been found to accompany adult oriented businesses. However, because of the unique geographical nature of Monroe County, separation distances of 1,000 feet common in other ordinances preclude all usable land area in the Keys. Also of concern are the use of definitions that accurately target adult entertainment establishments and not other uses such as museums, art exhibits, art and cultural performance theaters, and professional photography studios.

At their regular meeting on July 2, 2002, the Development Review Committee passed a resolution accepting the proposed text below.

II. Proposed Text

The proposed language below is to be added under Article VII. Land Use Districts:

DIVISION 17. REGULATION OF SEXUALLY ORIENTED BUSINESSES

Section 9.5-435. Purpose and Intent

(a) It is the purpose of this section to regulate sexually oriented businesses as to promote the health, safety, and general welfare of the citizens of Monroe County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the unincorporated area of the county. The provisions of this section have neither the purpose or intent of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials, or other aspects of constitutionally protected speech. It is not the intent of the county commission to legislate with respect to matters of obscenity in this section, as those matters are regulated by federal and state law, particularly, Chapters 800 and 847, Florida Statutes. Similarly, it is not the intent or effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny the distributors and exhibitors of sexually oriented entertainment access to their intended market. Neither is it the intent or effect of this section to condone or legitimize the distribution of sexually oriented material.

Section 9.5-436. Definitions

For the purposes of this division, the terms and phrases listed below shall have the following meanings:

(S-1) *Sexually oriented bookstore* shall mean:

An establishment that rents and/or sells sexually oriented materials in any form to the public and meets any one of the following three tests:

- (a) the revenues from sexually oriented materials represent more than ten (10) percent of the gross revenues of the establishment over the same period;
- (b) twenty-five (25) percent or more of the stock-in-trade consists of sexually oriented materials;
- (c) It advertises or recognizes itself in any forum as "XXX", "adult", "sex" or otherwise as a sexually oriented business.

(S-2) *Sexually oriented business* shall mean:

Individually or in combination a sexually oriented book store, sexually oriented entertainment establishment, or sexually oriented motion picture theater as defined herein, and any other establishment whose employees display or expose specified anatomical areas as defined herein.

(S-3) *Sexually oriented entertainment establishment* shall mean:

An establishment whose employees exhibit or display specific sexual activities or expose specified anatomical areas while performing.

(S-4) *Sexually oriented materials* shall mean:

Books, magazines, periodicals, or other printed matter, or photographs, CD-ROMs or other devices used to record computer images, films, motion pictures, video cassettes, digital video disks (DVDs), slides or other visual representations or recordings which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas or instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

(S-5) *Sexually oriented motion picture theater* shall mean:

An establishment designed to permit the viewing of motion pictures and other film material which has as its primary or dominant theme matters depicting, illustrating or relating to specified sexual activities for observation by the patrons thereof.

(S-6) *Specified anatomical areas* shall mean:

- (a) Less than completely and opaquely covered: human genitals, pubic region, the human buttocks, and female breast below a point immediately above the top of the areola; and/or
- (b) Human male genitals in a discernibly turgid state, even if completely covered.

(S-7) *Specified sexual activities* shall mean:

Human genitals in a state of sexual stimulation or arousal or acts of human masturbation, sexual intercourse, sodomy, bestiality, or fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast.

Section 9.5-437. Applicability

- (a) Sexually oriented businesses shall be allowed in land use districts that permit commercial development per Division 2 of this Chapter with the following restrictions:
 - (1) No sexually oriented business shall be located within five hundred (500) feet of the property line of any property used for residential purposes.
 - (2) No sexually oriented business shall be located within five hundred (500) feet of any property used as a place of worship, a public park, or a school.
 - (3) No sexually oriented business shall be located within five hundred (500) feet of another sexually oriented business.
 - (4) Sexually oriented businesses shall opaquely cover each window or other opening through which a person at the establishment may otherwise see inside the establishment.
 - (5) Signs for a sexually oriented business shall not depict specified anatomical areas or specified sexual activities.
- (b) For the purposes of Section 9.5-436(a) distances from properties shall be calculated by straight line measurement from property line to property line, using the closest property lines of the parcels of land involved.

Section 9.5-438. Non-conforming uses

- (a) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the subsequent location of a resident, a property used as a place of worship,

a park, or a school within five-hundred (500) feet of it. This provision applies only to a legally established sexually oriented business, not to any sexually oriented business that had been terminated for any reason or discontinued for a period of ninety (90) days or more subsequent to the location of the residential use, place of worship, park or school.

- (b) Amortization. Within one year of the effective date of this Ordinance, all existing sexually oriented businesses shall conform to the provisions of this Division, or the use shall be terminated.

PLANNING COMMISSION RESOLUTION #P50-02

PLANNING COMMISSION RESOLUTION NO. P50-02

A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION RECOMMENDING **APPROVAL** TO THE BOARD OF COUNTY COMMISSIONERS THE REQUEST FILED BY THE PLANNING AND ENVIRONMENTAL RESOURCES DEPARTMENT TO ADD SECTIONS 9.5-435 THROUGH 9.5-438 TO THE MONROE COUNTY CODE TO REQUIRE SEXUALLY ORIENTED BUSINESSES TO HAVE OPAQUE WINDOWS AND DOORS; REQUIRE A SEPARATION DISTANCE OF 500 FEET BETWEEN SEXUALLY ORIENTED BUSINESSES AND THE FOLLOWING USES: PUBLIC PARKS, SCHOOLS, PLACES OF WORSHIP, AREAS USED FOR RESIDENTIAL PURPOSES, AND OTHER SEXUALLY ORIENTED BUSINESSES; AND CREATE AN AMORTIZATION (OR 'SUNSET') PERIOD FOR EXISTING SEXUALLY ORIENTED BUSINESSES TO COME INTO COMPLIANCE OR CEASE OPERATIONS.

WHEREAS, during its regular meeting on November 21, 2001 the Board of County Commissioners directed the Planning department to prepare a report on sexually oriented businesses located within the unincorporated areas of the County; and

WHEREAS, the report, entitled "Recommendations for the Regulation of Adult Oriented Businesses in Monroe County, Florida" found that sexually oriented businesses may have negative secondary effects on surrounding land uses; and

WHEREAS, the Board reviewed the report and responded by directing Growth Management staff to draft an amendment to the Land Development Regulations (LDRs) based on the recommendations outlined in the report; and

WHEREAS, the intent of the Board is not to suppress expression protected by the First Amendment, but rather to mitigate potential deleterious secondary impacts on sensitive surrounding land uses by establishing reasonable land use restrictions for sexually oriented businesses that will reduce the potential secondary impacts; and

WHEREAS, during a regularly scheduled meeting held on July 2, 2002, the Development Review Committee conducted a review and consideration of the request by the Planning and Environmental Resources Department to add Sections 9.5-435 through 9.5-438 of the Land Development Regulations; and

WHEREAS, the Development Review Committee passed Resolution No. D12-02 recommending approval of the proposed text amendment; and

WHEREAS, during a regular meeting held on July 23, 2002, the Monroe County Planning Commission conducted a public hearing on the proposed text; and

WHEREAS, The Planning Commission was presented with the following information, which by reference is hereby incorporated as part of the record of said hearing:

1. The Staff Report prepared on June 12, 2002 by Robert Will, Planner.
2. The sworn testimony of the Growth Management Staff.
3. Advice from Bob Shillinger, the Planning Commission Counsel; and
4. Comments by the public; and

WHEREAS, the Planning Commission has made the following Findings of Fact based on the evidence presented:

1. The proposed regulation doe not intend to suppress expression protected by the First Amendment, and
2. The proposed regulations will allow sexually oriented businesses to locate within unincorporated Monroe County, and
3. The proposed regulations will protect sensitive land uses from the negative impacts which may result from a sexually oriented business;

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF MONROE COUNTY, FLORIDA, that the preceding Findings of Fact support its decision to recommend **APPROVAL** to the Board of County Commissioners of the addition to the text of the Monroe County Land Development Regulations, Section 9.5-435 through 9.5-438 as follows:

DIVISION 17. REGULATION OF SEXUALLY ORIENTED BUSINESSES

Section 9.5-435. Purpose and Intent

(a) It is the purpose of this section to regulate sexually oriented businesses as to promote the health, safety, and general welfare of the citizens of Monroe County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the unincorporated area of the county. The provisions of this section have neither the purpose or intent of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials, or other aspects of constitutionally protected speech. It is not the intent of the county commission to legislate with respect to matters of obscenity in this section, as those matters are regulated by federal and state law, particularly, Chapters 800 and 847, Florida Statutes. Similarly, it is not the intent or effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny the distributors and exhibitors of sexually oriented entertainment access to their intended market. Neither is it the intent or effect of this section to condone or legitimize the distribution of sexually oriented material.

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- (c) It advertises or recognizes itself in any forum as "XXX", "adult", "sex" or otherwise as a sexually oriented business.

(S-2) *Sexually oriented business* shall mean:

Individually or in combination a sexually oriented book store, sexually oriented entertainment establishment, or sexually oriented motion picture theater as defined herein, and any other establishment whose employees display or expose specified anatomical areas as defined herein.

(S-3) *Sexually oriented entertainment establishment* shall mean:

An establishment whose employees exhibit or display specific sexual activities or expose specified anatomical areas while performing.

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Books, magazines, periodicals, or other printed matter, or photographs, CD-ROMs or other devices used to record computer images, films, motion pictures, video cassettes, digital video disks (DVDs), slides or other visual representations or recordings which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas or instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

(S-5) *Sexually oriented motion picture theater* shall mean:

An establishment designed to permit the viewing of motion pictures and other film material which has as its primary or dominant theme matters depicting, illustrating or relating to specified sexual activities for observation by the patrons thereof.

(S-6) *Specified anatomical areas* shall mean:

- (a) Less than completely and opaquely covered: human genitals, pubic region, the human buttocks, and female breast below a point immediately above the top of the areola; and/or
- (b) Human male genitals in a discernibly turgid state, even if completely covered.

(S-7) *Specified sexual activities* shall mean:

Human genitals in a state of sexual stimulation or arousal or acts of human masturbation, sexual intercourse, sodomy, bestiality, or fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast.

Section 9.5-437. Applicability

- (a) Sexually oriented businesses shall be allowed in land use districts that permit commercial development per Division 2 of this Chapter with the following restrictions:
 - (1) No sexually oriented business shall be located within five hundred (500) feet of the property line of any property used for residential purposes.
 - (2) No sexually oriented business shall be located within five hundred (500) feet of any property used as a place of worship, a public park, or a school.
 - (3) No sexually oriented business shall be located within five hundred (500) feet of another sexually oriented business.
 - (4) Sexually oriented businesses shall opaquely cover each window or other opening through which a person at the establishment may otherwise see inside the establishment.
 - (5) Signs for a sexually oriented business shall not depict specified anatomical areas or specified sexual activities.
- (b) For the purposes of Section 9.5-436(a) distances from properties shall be calculated by straight line measurement from property line to property line, using the closest property lines of the parcels of land involved.

Section 9.5-438. Non-conforming uses

- (a) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the subsequent location of a resident, a property used as a place of worship, a park, or a school within five-hundred (500) feet of it. This provision applies only to a legally established sexually oriented business, not to any sexually oriented business that had been terminated for any reason or discontinued for a period of ninety (90) days or more subsequent to the location of the residential use, place of worship, park or school.
- (b) Amortization. Within one year of the effective date of this Ordinance, all existing sexually oriented businesses shall conform to the provisions of this Division, or the use shall be terminated.

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